

Visual Arts Seminar

Copyright Issues for Visual Artists

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I. Copyright Law

If you create it, you own it!

If you are involved in a lawsuit claiming violation of the copyright entitlement, you must substantiate claim to win your case.

Take photograph of artwork and mail it to yourself. The government date on the envelope establishes a date for documentation.

Date photograph. Establish date of completion on art object.

Anything that shows you created it first will be your best documentation.

To file and register a copyright with the federal government is a final and more detailed step.

Statutory penalties – must have registration with copyright office if you are filing a lawsuit. You may get royalties if case is upheld in court.

You cannot make something from original piece and sell it if it is not your artwork.

Theme and variation is a matter of argument.

A lawsuit will be established on who owns what is sold.

Title, owner – who has possession.

Can sell and reserve copyrights but you need evidentiary proof.

You must discuss right at time of selling.

Buyer must have evidence of rights that you are willing to include in the sale. Signature on document must be there; otherwise there is no evidentiary proof.

You can use the encircled © which is essentially a disclaimer. Only you, the artist knows about it. It doesn't give you any more legal rights, it simply enforces the fact that the artwork is copyrighted.

Pilfering from websites

Images

Websites

Illegal, but must have proof of theft – evidentiary documentation.

Copyright = artwork

Tm or trademark = file with state and federal government

Patent = inventions

Copyright is the easiest to acquire and establish.

A secondary sale must include the evidence of original sale.

Document everything when selling artwork.

II Business practice

Sales – sole proprietor – any profit is your and what you will owe the IRS.

Partnership – you share profits and debts.

Corporation - incurs liability

LLC – more flexibility – simplicity and 1 tax form

Trust – fewer tax rules.

LLC – limited liability company.

If artwork presents potential harm and damage, LLC is something to consider. Liability protection. Calculate risks.

To establish a corporation you must have a board of directors, quarterly meetings with recorded minutes. You must follow the formalities of a corporation.

Corporate tax is 15%.

Trusts – flexible also.

Take precautions with Living Wills.

Printers – for poster, giclee, etc. Printer has no rights, you hired printer.

MUST HAVE EVIDENCE

YOU DON'T WANT TO SUE OR BE SUED, BUT IF YOU DO, BE PREPARED TO WIN.